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Human rights situations that require the Council's attention

Joint written statement* submitted by the American Association of Jurists, Asociación Española para el Derecho Internacional de los Derechos Humanos AEDIDH, Association mauritanienne pour la promotion du droit, Association mauritanienne pour la transparence et le développement, France Libertés : Fondation Danielle Mitterrand, International Association of Democratic Lawyers (IADL), International Fellowship of Reconciliation, International-Lawyers.Org, Paz y Cooperación, Réseau Unité pour le Développement de Mauritanie, World Barua Organization (WBO), non-governmental organizations in special consultative status, International Educational Development, Inc., Liberation, Mouvement contre le racisme et pour l'amitié entre les peuples, World Peace Council, non-governmental organizations on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[23 May 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The illegal occupation of Western Sahara and the violation of the rights of Sahrawi prisoners*

Background

Western Sahara was under Spanish colonial rule from 1884. In December 1963, the General Assembly[1] added the Territory to the list of the Ad-Hoc Committee on the Situation in the Non-Self-Governing Territories concerning the implementation of the Declaration on the Granting of Independence to colonial countries and peoples.

We would recall the Council that the principles of equal rights and self-determination of peoples adopted by the UN General Assembly[2] affirm that "Every State has the duty to refrain from any forcible action which deprives peoples [...] in the elaboration of the present principle of their right to self-determination and freedom and independence." It further stresses that "The Territory of a colony or other Non Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or non Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles."[3]

In October 1975, the International Court of Justice, responding to a request for an advisory opinion from the General Assembly, determined that " The inferences to be drawn from the information before the Court concerning internal acts of Moroccan sovereignty and from that concerning international acts are in accord in not providing indications of the existence,..., of any legal tie of territorial sovereignty between Western Sahara and the Moroccan State."[4]
On 6 November 1975, the Kingdom of Morocco invaded Western Sahara militarily and organized a transfer of thousands of Moroccans into the Non-Self-Governing Territory (Green March). The same day, the UN Security Council adopted resolution 380, deploring the holding of the march and calling upon Morocco to immediately withdraw from the Territory of Western Sahara all of the participants to the march.

The illegal occupation of Western Sahara

In his latest report to the General Assembly[5], the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Mr. Michael Lynk, analyzed the occupation of the Palestinian territory through the prism of four general principles of international law. He came to the conclusion that the said occupation is illegal.
Although the historical and geopolitical background is not the same, the four principles apply to the occupation of Western Sahara by the Kingdom of Morocco.
The Special Rapporteur rightly underscored that "Colonialism, occupation and other forms of alien rule are very much the exception and they can only be justified in law and international practice as a short-term and abnormal condition that is leading unhesitatingly towards self-determination and/or sovereignty."
The first principle of modern international law evoked by the Special Rapporteur establishes that an occupier cannot conquer, annex or gain any legal or sovereign title over any part of the territory under its occupation.
As mentioned above, the International Court of Justice already established that there were no indications of any legal tie of territorial sovereignty between Western Sahara and the Moroccan State.

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[1] UNGA Resolution 1956 (XVIII)

[2] UNGA resolution 2625 (XXV) adopting the Declaration of Principles of International Law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations

[3] It is, *inter alia*, based on this very Principle that the European Union Court of Justice established that the Association and Liberalization agreement between the EU and the Kingdom of Morocco, as well as the Partnership Agreement between the EU and the Kingdom of Morocco in the fisheries sector were not applicable to Western Sahara.

[4] Western Sahara, Advisory Opinion, I.C.J. Reports 1975, p.12

[5] A/72/556 (23.10.2017)

Nevertheless, the Kingdom of Morocco, not only continues to encourage Moroccan civilian population transfer to Western Sahara, thus violating article 49 of the Fourth Geneva Convention, but it has also adopted decrees[6] which establishes the administrative territorial division of the Kingdom that includes the Occupied Territory of Western Sahara. This, of course, is clearly an illegal annexation.

The second well-established principle requires that the occupation must be temporary and cannot be either permanent or indefinite. The Moroccan longstanding posture in the negotiations, as well as in the annual King Mohamed VI's speeches celebrating the invasion March of 1975, shows that Morocco has no intention to end its occupation.

The third principle of international law establishes that during the occupation, the occupier has to act in the best interests of the people under occupation. The systematic plundering of the natural resources in Western Sahara by the Kingdom of Morocco, without the free, prior and informed consent of the internationally recognized representative of the people of Western Sahara[7], as well as the serious and persistent violations of the Geneva Conventions and the systematic character of the Human Rights' violations, including of the right to development, committed by the Occupying Power, illustrate that the Moroccan authorities have never taken in due account the interests of the people under occupation.

The fourth principle affirms that the occupier must administer the occupied territory in good faith. Indeed, the principle of good faith is a cardinal rule of treaty interpretation. The intention to apply the treaties with the European Union to the Territory of Western Sahara, as well as the recent actions of the Kingdom of Morocco against the Sahrawi Arab Democratic Republic in the framework of the African Union, questions the good faith of the Kingdom of Morocco's interpretation of international treaties in the case of Western Sahara.

The continuous breaches of these four principles of international law regarding the Occupying Power, the Kingdom of Morocco, demonstrate the real illegality of the occupation of Western Sahara.

The violations of the rights of Sahrawi prisoners

Since the Kingdom Morocco invaded and continues to illegally occupy the Non Self-Governing Territory of Western Sahara with a heavy military presence and further considering the declaration deposited on 23 June 2015 by the Polisario Front in conformity with art. 96.3 of Additional Protocol I, International Humanitarian Law fully applies to Western Sahara.

Consequently, the Sahrawi people originating from the Non Self-Governing Territory have to be considered as "protected persons", in accordance with article 4 of the Fourth Geneva Convention.

In this context, the imprisonment of Sahrawis by the Occupying Power outside Western Sahara contravenes the provisions of article 76 of the Fourth Geneva Convention, which provides that "Protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein…".

In the framework of the Gdeim Izik events in 2010, the violent dismantlement by the Moroccan authorities of the pacific protest's camp set in the desert by the Sahrawi people and the subsequent arrest of the leaders of the camp, the Occupying Power has clearly violated International Humanitarian Law.

Presently, 17 Saharawis sentenced from 20 years to life imprisonment are still held in detention centers outside Western Sahara, hundreds of kilometres away from their families, difficulting visits. Some prisoners are deprived of their needed medical care.

It is to be noted that, on 15th November 2016, following a complaint lodged by one of the detainees (Mr. Ennaâma Asfari), the UN Committee Against Torture[8] founded that the facts before it revealed a violation by the Kingdom of Morocco of articles 1, 12, 13, 14, 15 and 16. In other words, the Committee founded that Ennaâma Asfari was a victim of torture for which the Moroccan authorities did not want to conduct an independent investigation.

In its conclusions, the Committee called on the Kingdom of Morocco to compensate the applicant adequately and fairly, to initiate an impartial and thorough investigation into the events in question, to refrain from any act of pressure, intimidation or retaliation that could harm the physical and moral integrity of the complainant, and his family and to allow the complainant to receive visits from the family to prison. The Kingdom of Morocco has rejected the decision of the Committee.

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[6] The last one on 20 February 2015 (no. 2-15-40)

[7] UNGA res. 34/37 (21.11.1979) recognizes the Polisario Front as the representative of the people of Western Sahara

[8] CAT/C/59/D/606/2014 (published on 12 Dec. 2016)

Mrs. Claude Mangin, a French national, spouse of Ennaâma Asfari, saw him for the last time in June 2016; since then, she has been turned back four times upon arrival at the airport in Morocco, despite having informed the Moroccan authorities of her visit.
On 17th May, Mrs. Claude Mangin has suspended the hunger strike she started on 18th April in Ivry s/Seine (France), calling upon Moroccan authorities to let her visit regularly her husband, Mr. Ennaâma Asfari.

Recommendations

The undersigned organizations call on:

- all High Contracting Parties to ensure that the Kingdom of Morocco respects the Fourth Geneva Convention in Western Sahara;
- the Kingdom of Morocco to fully respect the Fourth Geneva Convention in Western Sahara;
- the Kingdom of Morocco to fully respect the Human Rights of the Sahrawi people, including their right to self-determination and independence, in conformity with UNGA resolution 1514 (XV);
- the Kingdom of Morocco to fully respect the Principles of International Law, including the Principle of equal rights and self-determination of peoples and the principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter;
- the members of the Human Rights Council to create the mandate of Special Rapporteur on the Human Rights violations in the Occupied Territory of Western Sahara.

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Humanos (CODESA), Colectivo Saharaui en Estepona, Colectivo Saharaui en Gipuzkoa, Colectivo Saharaui en Jaén, Colectivo Saharaui en Lanzarote, Comisión Ecuménica de Derechos Humanos de Ecuador, Comisión General Justicia y Paz Comisión Media Independientes, Comisión Nacional de los Derechos Humanos de la República Dominicana (CNDH-RD), Comisión Nacional Saharaui por los Derechos Humanos (CONASADH), Comité d'Action et de Réflexion pour l'Avenir du Sahara Occidental, Comité de Apoyo por el Plano de Paz y la Protección de los Recursos Naturales en el Sáhara Occidental, Comité de Defensa del Derecho de Autodeterminación (CODAPSO), Comité de Familiares de los 15 Jóvenes Secuestrados, Comité de Familiares de Mártires y Desaparecidos, Comité de Familiares de los Presos Políticos Saharauis, Comité de Protección de los Defensores Saharauis – Freedom Sun, Comité de Protección de los Recursos Naturales, Comité Saharaui de Defensa de Derechos Humanos en Glaimim, Comité Saharaui de Defensa de Derechos Humanos en Smara, Comité Saharaui de Defensa de Derechos Humanos (Zag), Comité Saharaui por el Monitereo de los Derechos Humanos (Assa), Comité de Solidaridad Oscar Romero, Comité Suisse de soutien au Peuple Sahraoui, Comité de Victimas de Agdaz y Magouna, Comunidad Saharaui en Aragón, Comunidad Saharaui en Castilla y León, Comunidad Saharaui en Castilla la Mancha, Comunidad Saharaui en Catalunya, Comunidad Saharaui en Grenada, Comunidad Saharaui en Las Palmas, Comunidad Saharaui en Murcia, Coordinadora Estatal de Asociaciones Solidarias con el Sáhara (CEAS – Sáhara), Coordinadora de Gdeim Izik para un Movimiento Pacífico, Coordinadora de los Graduados Saharauis Desempleados, Coordinadora d´Organizacións No-Governamentals de Cooperació al Desenvolupament (CONGDIB), Coordinadora de las ONGs en Aaiún, Coordinadora Saharaui de Derechos Humanos de Tantan, DISABI Bizkaia, Equipe Média, Federació ACAPS de Catalunya, Federació d'Associacions de Solidaritat amb el Poble Sahraui del País Valencià, Federación Andaluza de Asociaciones Solidarias con el Sahara – FANDAS, Federación de Asociaciones de Amigos del Pueblo Saharaui de Extremadura – FEDESAEX, Federación de la Comunidad de Madrid de Asociaciones Solidarias con el Sahara - FEMAS Sahara, Federación Estatal de Instituciones Solidarias con el Pueblo Saharaui – FEDISSAH, Forum Futuro de la Mujer Saharaui, Fundación Mundubat, Fundación Sahara occidental, Giuristi Democratici, Groupe Non Violence Active (NOVA SAHARA OCCIDENTAL), Grupo por la renuncia de la Nacionalidad Marroquí, Ibsar Al Khair Association for the Disabled in Western Sahara, Liga de Defensa de los Presos Políticos Saharaui, Liga de Deportistas Saharauis en España, Liga de Estudiantes Saharauis en España, Liga de Periodistas Saharauis en España, Liga Saharaui de defensa de Derechos Humanos y Protección de RW-Bojador, Ligue des Jeunes et des Etudiants Sahrauois en France, National Television Team, Observatorio Aragonés para el Sáhara Occidental, Observatorio Asturiano de Derechos Humanos para el Sáhara Occidental – OAPSO, Observatorio Saharaui por el Niño y la Mujer, Observatorio Saharaui de Protección del Niño, Observatorio Saharaui de Recursos Naturales, Organización Contra la Tortura en Dakhla, Organización Saharaui por la Defensa de las libertades y la dignidad, Pallasos en Rebeldía y Festiclown, Por un Sahara Libre, Sahara Euskadi Vitoria, Sahara Gasteiz Vitoria, Saharawi Association for Persons with Disabilities in Western Sahara, Saharawi Association in the USA (SAUSA), Saharawi Campaign against the Plunder (SCAP), Saharawi Center for Media and Communication, Saharawi Media Team, Sindacato Español Comisiones Obrearas (CCOO), Solidariedade Galega col Pobo Saharaui (SOGAPS), Tayuch Amurio, Tawasol Lludio, Unión de Asociaciones Solidarias con el Sáhara de Castilla y León, Union des Ingénieurs Sahraouis, Unión de Juristas Saharauis (UJS) Unión Nacional de Abogados Saharauis Unión Nacional de Mujeres Saharauis (UNMS) Unión Nacional de la Juventud de Saguia El Hamra y Rio de Oro (UJSARIO), Unión Nacional de Estudiantes de Saguia El Hamra y Rio de Oro (UESARIO), Unión Nacional de Trabajadores de Saguia El Hamra y Rio de Oro (UGTSARIO), Unión de Periodistas y Escritores Saharauis (UPES), US Western Sahara Foundation, VZW de Vereniging van de Sahrawi Gemeenschap in Belgie, Western Sahara Resource Watch España (WSRW España), Western Sahara Times, NGOs without consultative status, also share the views expressed in this statement.